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10 Attorneys for Defendant QualxServ

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13 UNITED STATES DISTRICT COURT
14 SOUTHERN DISTRICT OF CALIFORNIA

15
16 GEORGE SCHULZ, an individual;
PABLO CARDONA, an individual on
17 behalf of himself, and on behalf of all
persons similarly situated,

18 Plaintiffs,

19 v.

20 QUALXSERV, LLC, a Delaware
Company; WORLDWIDE
21 TECHSERVICES, LLC, a Delaware
Company, and DOES 1 through 100,
22 inclusive,

23 Defendants.

Case No. 09 CV 0017 LAB AJB

**ANSWER TO CONSOLIDATED CLASS
ACTION COMPLAINT**

24 COMES NOW, Defendant QUALXSERV, LLC, a Delaware limited liability company,
25 n/k/a WORLDWIDE TECHSERVICES, LLC, a Delaware limited liability company (jointly as
26 “QualxServ” or the “Company”) and answers the Consolidated Class Action Complaint (the
27 “Complaint”), as follows:
28

JURISDICTION

1
2 1. QualxServ asserts that paragraph 1 of the Complaint contains statements of law or
3 opinion that QualxServ is not required to admit or deny. QualxServ denies the remaining
4 allegations contained in paragraph 1 of the Complaint.

INTRODUCTION

5
6 2. QualxServ asserts that paragraph 2 of the Complaint contains statements of law or
7 opinion that QualxServ is not required to admit or deny. QualxServ denies the remaining
8 allegations contained in paragraph 2 of the Complaint.

9 3. QualxServ admits that certain of its part-time technicians are paid on a per-call
10 basis that compensates the employees for the time spent on the call, traveling to and from the call,
11 and performing simple administrative tasks such as obtaining calls, scheduling appointments, and
12 closing calls. QualxServ further admits that certain technical certifications are a condition of
13 employment. QualxServ asserts that the remainder of the allegations in paragraph 3 of the
14 Complaint contain statements of law or opinion that QualxServ is not required to admit or deny.
15 Unless otherwise expressly admitted as set forth in the first two sentences of this paragraph 3 of
16 the Answer, QualxServ denies the remaining allegations contained in paragraph 3 of the
17 Complaint.

18 4. QualxServ asserts that paragraph 4 of the Complaint contains statements of law or
19 opinion that QualxServ is not required to admit or deny. QualxServ denies the remaining
20 allegations contained in paragraph 4 of the Complaint.

21 5. QualxServ asserts that paragraph 5 of the Complaint contains statements of law or
22 opinion that QualxServ is not required to admit or deny. QualxServ denies the remaining
23 allegations contained in paragraph 5 of the Complaint.

24 6. QualxServ asserts that paragraph 6 of the Complaint contains statements of law or
25 opinion that QualxServ is not required to admit or deny. QualxServ denies the remaining
26 allegations contained in paragraph 6 of the Complaint.

1 With respect to paragraphs 15(a) and 15(b), QualxServ admits that Plaintiff Schulz worked for
2 QualxServ as a part-time, temporary employee from in or about December 2006 to in or about
3 August 2008; QualxServ denies the remaining allegations of paragraphs 15(a) and 15(b) of the
4 Complaint. With respect to paragraph 15(c), QualxServ admits that Plaintiff was paid on a per-
5 incident basis; QualxServ denies the remaining allegations of paragraph 15(c) of the Complaint.
6 QualxServ asserts that paragraphs 15(d) to 15(f) of the Complaint contain statements of law or
7 opinion that QualxServ is not required to admit or deny. QualxServ denies the remaining
8 allegations contained in paragraph 16(d) to 16(f) of the Complaint.

9 16. QualxServ is without sufficient information or knowledge to admit or deny the
10 allegations contained in the first sentence of paragraph 16 and therefore denies those allegations.
11 With respect to paragraphs 16(a) and 16(b), QualxServ admits that Plaintiff Cardona worked for
12 QualxServ as a part-time, temporary employee from in or about October 2007 to in or about April
13 2008; QualxServ denies the remaining allegations of paragraphs 16(a) and 16(b) of the
14 Complaint. With respect to paragraph 16(c), QualxServ admits that Plaintiff was paid on a per-
15 incident basis; QualxServ denies the remaining allegations of paragraph 16(c) of the Complaint.
16 QualxServ asserts that paragraphs 16(d) to 16(f) of the Complaint contain statements of law or
17 opinion that QualxServ is not required to admit or deny. QualxServ denies the remaining
18 allegations contained in paragraph 16(d) to 16(f) of the Complaint.

19 17. QualxServ admits that it is a Delaware company engaged in technology
20 deployment and field maintenance services for leading technology partner.

21 18. QualxServ admits that that its new corporate name is now Worldwide
22 TechServices, LLC. QualxServ denies the remaining allegations in paragraph 18. The remaining
23 allegations in paragraph 18 of the Complaint refer to documents and/or electronic data which
24 speak for themselves or contain statements of law or opinion that QualxServ is not required to
25 admit or deny.

26 19. QualxServ admits that that its new corporate name is now Worldwide
27 TechServices, LLC, that it continues in the same business and that it operates at the same
28 principal place of business at 836 North Street, Tewksbury, Massachusetts. The remaining

1 allegations in paragraph 19 of the Complaint refer to documents and/or electronic data which
2 speak for themselves or contain statements of law or opinion that QualxServ is not required to
3 admit or deny.

4 20. QualxServ admits that its corporate headquarters are in Tewksbury, Massachusetts
5 and that it provides deployment and support services for technology partners. The remaining
6 allegations in paragraph 20 of the Complaint contain statements of law or opinion that QualxServ
7 is not required to admit or deny..

8 21. QualxServ asserts that paragraph 21 of the Complaint contains statements of law
9 or opinion that QualxServ is not required to admit or deny. QualxServ denies the remaining
10 allegations contained in paragraph 21 of the Complaint.

11 22. QualxServ is without information or knowledge sufficient to admit or deny the
12 allegations of paragraph 22 of the Complaint and therefore denies the allegations contained in
13 paragraph 22 of the Complaint.

14 23. QualxServ asserts that paragraph 23 of the Complaint contains statements of law
15 or opinion that QualxServ is not required to admit or deny. QualxServ denies the remaining
16 allegations contained in paragraph 23 of the Complaint.

17 **FACTUAL BACKGROUND FOR ALL CLAIMS**

18 24. QualxServ admits that its technicians service computers in commercial and
19 residential settings. QualxServ denies the remaining allegations contained in paragraph 24 of the
20 Complaint.

21 25. QualxServ admits that it conducts business in California. QualxServ asserts the
22 remaining allegations in paragraph 25 of the Complaint contain statements of law opinion that
23 QualxServ is not required to admit or deny. QualxServ denies the remaining allegations
24 contained in paragraph 25 of the Complaint.

25 26. QualxServ admits that its technicians service computers in commercial and
26 residential settings. QualxServ denies the remaining allegations contained in paragraph 26 of the
27 Complaint.

1 27. QualxServ admits that certain of its employees' duties include servicing computers
2 in commercial and residential settings, picking up and dropping off parts, and performing certain
3 administrative tasks. QualxServ is not required to admit or deny the allegations in the second
4 sentence of paragraph 27 that appear to quote from a document without specifically identifying
5 the document because the provisions of any such document speak for themselves. QualxServ
6 denies the remaining allegations contained in paragraph 27 of the Complaint.

7 28. QualxServ denies the allegations contained paragraph 28 of the Complaint.

8 29. QualxServ asserts that paragraph 29 of the Complaint contains statements of law
9 or opinion that QualxServ is not required to admit or deny. QualxServ admits that certain of its
10 employees were paid on a per incident basis. QualxServ denies the remaining allegations
11 contained in paragraph 29 of the Complaint.

12 30. QualxServ asserts that paragraph 30 of the Complaint contains statements of law
13 or opinion that QualxServ is not required to admit or deny. QualxServ denies the remaining
14 allegations contained in paragraph 30 of the Complaint.

15 31. QualxServ denies the allegations contained in paragraph 31 of the Complaint.

16 32. QualxServ asserts that paragraph 32 of the Complaint contains statements of law
17 or opinion that QualxServ is not required to admit or deny. QualxServ denies the remaining
18 allegations contained in paragraph 32 of the Complaint.

19 33. QualxServ asserts that paragraph 33 of the Complaint contains statements of law
20 or opinion that QualxServ is not required to admit or deny. QualxServ denies the remaining
21 allegations contained in paragraph 33 of the Complaint.

22 34. QualxServ asserts that paragraph 34 of the Complaint contains statements of law
23 or opinion that QualxServ is not required to admit or deny. QualxServ denies the remaining
24 allegations contained in paragraph 34 of the Complaint.

25 35. QualxServ asserts that paragraph 35 of the Complaint contains statements of law
26 or opinion that QualxServ is not required to admit or deny. QualxServ denies the remaining
27 allegations contained in paragraph 35 of the Complaint.

1 36. QualxServ admits that certain technicians are paid on a per incident basis.
2 QualxServ asserts that the remaining allegations in paragraph 36 of the Complaint contain
3 statements of law or opinion that QualxServ is not required to admit or deny. QualxServ denies
4 the remaining allegations contained in paragraph 36 of the Complaint.

5 37. QualxServ asserts that paragraph 37 of the Complaint contains statements of law
6 or opinion that QualxServ is not required to admit or deny. QualxServ denies the remaining
7 allegations contained in paragraph 37 of the Complaint.

8 38. QualxServ asserts that paragraph 38 of the Complaint contains statements of law
9 or opinion that QualxServ is not required to admit or deny or alleges facts about which QualxServ
10 is without information or knowledge sufficient to admit or deny. QualxServ denies the remaining
11 allegations contained in paragraph 38 of the Complaint.

12 39. QualxServ asserts that paragraph 39 of the Complaint contains statements of law
13 or opinion that QualxServ is not required to admit or deny. QualxServ denies the remaining
14 allegations contained in paragraph 39 of the Complaint.

15 40. QualxServ asserts that paragraph 40 of the Complaint contains statements of law
16 or opinion that QualxServ is not required to admit or deny. QualxServ denies the remaining
17 allegations contained in paragraph 40 of the Complaint.

18 **CLASS ACTION ALLEGATIONS**

19 41. QualxServ asserts that paragraphs 41(a) to 41(h) contain statements of law or
20 opinion that QualxServ is not required to admit or deny. QualxServ is without information or
21 knowledge sufficient to admit or deny the remaining allegations in paragraphs 41(a) to 41(h) of
22 the Complaint and therefore denies the remaining allegations contained in paragraphs 41(a) to
23 41(h) of the Complaint.

24 42. QualxServ asserts that paragraph 42 of the Complaint contains statements of law
25 or opinion that QualxServ is not required to admit or deny. QualxServ denies the remaining
26 allegations contained in paragraph 42 of the Complaint.

1 43. QualxServ asserts that paragraphs 43(a) to 43(g) of the Complaint contain
2 statements of law or opinion that QualxServ is not required to admit or deny. QualxServ denies
3 the remaining allegations of paragraphs 43(a) to 43(g) of the Complaint.

4 44. QualxServ asserts that paragraph 44 of the Complaint contains statements of law
5 or opinion that QualxServ is not required to admit or deny. QualxServ denies the remaining
6 allegations contained in paragraph 44 of the Complaint.

7 45. QualxServ asserts that paragraph 45 of the Complaint contains statements of law
8 or opinion that QualxServ is not required to admit or deny. QualxServ is without information or
9 knowledge sufficient to admit or deny the remaining allegations of paragraph 45 of the Complaint
10 and therefore denies the remaining allegations contained in paragraph 45 of the Complaint.

11 46. QualxServ asserts that paragraph 46 of the Complaint contains statements of law
12 or opinion that QualxServ is not required to admit or deny. QualxServ denies the remaining
13 allegations contained in paragraph 46 of the Complaint.

14 47. QualxServ asserts that paragraph 47 of the Complaint contains statements of law
15 or opinion that QualxServ is not required to admit or deny. QualxServ denies the remaining
16 allegations contained in paragraph 47 of the Complaint.

17 **COLLECTIVE ACTION ALLEGATIONS**

18 48. QualxServ asserts that paragraph 48 of the Complaint contains statements of law
19 or opinion that QualxServ is not required to admit or deny. QualxServ denies the remaining
20 allegations contained in paragraph 48 of the Complaint.

21 **FIRST CLAIM FOR DENIAL OF OVERTIME COMPENSATION**

22 49. QualxServ incorporates by reference paragraphs 1 through 48 as though fully set
23 forth herein for each and every response in this Answer to the Complaint.

24 50. QualxServ asserts that paragraph 50 of the Complaint contains statements of law
25 or opinion that QualxServ is not required to admit or deny. QualxServ denies the remaining
26 allegations contained in paragraph 50 of the Complaint.

1 51. QualxServ asserts that paragraph 51 of the Complaint contains statements of law
2 or opinion that QualxServ is not required to admit or deny. QualxServ denies the remaining
3 allegations contained in paragraph 51 of the Complaint.

4 52. QualxServ asserts that paragraph 52 of the Complaint contains statements of law
5 or opinion that QualxServ is not required to admit or deny. QualxServ denies the remaining
6 allegations contained in paragraph 52 of the Complaint.

7 53. QualxServ asserts that paragraph 53 of the Complaint contains statements of law
8 or opinion that QualxServ is not required to admit or deny. QualxServ denies the remaining
9 allegations contained in paragraph 53 of the Complaint.

10 **SECOND CLAIM FOR DENIAL OF OVERTIME COMPENSATION**

11 54. QualxServ incorporates by reference paragraphs 1 through 53 as though fully set
12 forth herein for each and every response in this Answer to the Complaint.

13 55. QualxServ asserts that paragraph 55 of the Complaint contains statements of law
14 or opinion that QualxServ is not required to admit or deny. QualxServ denies the remaining
15 allegations contained in paragraph 55 of the Complaint.

16 56. QualxServ asserts that paragraph 56 of the Complaint contains statements of law
17 or opinion that QualxServ is not required to admit or deny. QualxServ denies the remaining
18 allegations contained in paragraph 56 of the Complaint.

19 57. QualxServ asserts that paragraph 57 of the Complaint contains statements of law
20 or opinion that QualxServ is not required to admit or deny. QualxServ denies the remaining
21 allegations contained in paragraph 57 of the Complaint.

22 58. QualxServ asserts that paragraph 58 of the Complaint contains statements of law
23 or opinion that QualxServ is not required to admit or deny. QualxServ denies the remaining
24 allegations contained in paragraph 58 of the Complaint.

25 59. QualxServ asserts that paragraph 59 of the Complaint contains statements of law
26 or opinion that QualxServ is not required to admit or deny. QualxServ denies the remaining
27 allegations contained in paragraph 59 of the Complaint.

1 60. QualxServ asserts that paragraph 60 of the Complaint contains statements of law
2 or opinion that QualxServ is not required to admit or deny. QualxServ denies the remaining
3 allegations contained in paragraph 60 of the Complaint.

4 61. QualxServ is without information or knowledge sufficient to admit or deny the
5 allegations of paragraph 61 of the Complaint and therefore denies the allegations contained in
6 paragraph 61 of the Complaint.

7 **THIRD CLAIM FOR FAILURE TO PAY WAGES FOR**
8 **COMPENSABLE MEAL BREAK PERIODS**

9 62. QualxServ incorporates by reference paragraphs 1 through 61 as though fully set
10 forth herein for each and every response in this Answer to the Complaint.

11 63. QualxServ asserts that paragraph 63 of the Complaint contains statements of law
12 or opinion that QualxServ is not required to admit or deny. QualxServ denies the remaining
13 allegations contained in paragraph 63 of the Complaint

14 64. QualxServ asserts that paragraph 64 of the Complaint contains statements of law
15 or opinion that QualxServ is not required to admit or deny. QualxServ is without information or
16 knowledge sufficient to admit or deny certain of the remaining allegations of paragraph 64 of the
17 Complaint and therefore denies those and all other remaining allegations contained in paragraph
18 64 of the Complaint.

19 **FOURTH CLAIM FOR FAILURE TO PAY WAGES FOR**
20 **COMPENSABLE REST BREAK PERIODS**

21 65. QualxServ incorporates by reference paragraphs 1 through 64 as though fully set
22 forth herein for each and every response in this Answer to the Complaint.

23 66. QualxServ asserts that paragraph 66 of the Complaint contains statements of law
24 or opinion that QualxServ is not required to admit or deny. QualxServ denies the remaining
25 allegations contained in paragraph 66 of the Complaint.

26 67. QualxServ asserts that paragraph 67 of the Complaint contains statements of law
27 or opinion that QualxServ is not required to admit or deny. QualxServ is without information or
28 knowledge sufficient to admit or deny certain of the remaining allegations of paragraph 67 of the

1 Complaint and therefore denies those and all other remaining allegations contained in paragraph
2 67 of the Complaint.

3 **FIFTH CLAIM FOR FAILURE TO PAY**

4 **MINIMUM WAGE/ "OFF THE CLOCK" WORK**

5 68. QualxServ incorporates by reference paragraphs 1 through 67 as though fully set
6 forth herein for each and every response in this Answer to the Complaint.

7 69. QualxServ asserts that paragraph 69 of the Complaint contains statements of law
8 or opinion that QualxServ is not required to admit or deny. QualxServ denies the remaining
9 allegations contained in paragraph 69 of the Complaint.

10 70. QualxServ asserts that paragraph 70 of the Complaint contains statements of law
11 or opinion that QualxServ is not required to admit or deny. QualxServ is without information or
12 knowledge sufficient to admit or deny certain of the remaining allegations of paragraph 70 of the
13 Complaint and therefore denies those and all other remaining allegations contained in paragraph
14 70 of the Complaint.

15 71. QualxServ asserts that paragraph 71 of the Complaint contains statements of law
16 or opinion that QualxServ is not required to admit or deny. QualxServ is without information or
17 knowledge sufficient to admit or deny certain of the remaining allegations of paragraph 71 of the
18 Complaint and therefore denies those and all other remaining allegations contained in paragraph
19 71 of the Complaint.

20 **SIXTH CLAIM FOR FAILURE TO FULLY OR SUFFICIENTLY REIMBURSE**

21 **EMPLOYEES FOR MANDATORY EXPENSES**

22 72. QualxServ incorporates by reference paragraphs 1 through 71 as though fully set
23 forth herein for each and every response in this Answer to the Complaint.

24 73. QualxServ asserts that paragraph 73 of the Complaint contains statements of law
25 or opinion that QualxServ is not required to admit or deny. QualxServ denies the remaining
26 allegations contained in paragraph 73 of the Complaint.

75. QualxServ asserts that paragraph 75 of the Complaint contains statements of law or opinion that QualxServ is not required to admit or deny. QualxServ is without information or knowledge sufficient to admit or deny certain of the remaining allegations of paragraph 75 of the Complaint and therefore denies those and all other remaining allegations contained in paragraph 75 of the Complaint.

77. QualxServ asserts that paragraph 77 of the Complaint contains statements of law or opinion that QualxServ is not required to admit or deny. QualxServ denies the remaining allegations contained in paragraph 77 of the Complaint.

78. QualxServ incorporates by reference paragraphs 1 through 77 as though fully set forth herein for each and every response in this Answer to the Complaint.

80. QualxServ asserts that paragraph 80 of the Complaint contains statements of law or opinion that QualxServ is not required to admit or deny. QualxServ is without information or knowledge sufficient to admit or deny certain of the remaining allegations of paragraph 80 of the Complaint and therefore denies those and all other remaining allegations contained in paragraph 80 of the Complaint.

EIGHTH CLAIM FOR LATE PAYMENT OF FINAL ACCRUED WAGES

81. QualxServ incorporates by reference paragraphs 1 through 80 as though fully set forth herein for each and every response in this Answer to the Complaint.

82. QualxServ asserts that paragraph 82 of the Complaint contains statements of law or opinion that QualxServ is not required to admit or deny. QualxServ denies the remaining allegations contained in paragraph 82 of the Complaint.

83. QualxServ asserts that paragraph 83 of the Complaint contains statements of law or opinion that QualxServ is not required to admit or deny. QualxServ denies the remaining allegations contained in paragraph 83 of the Complaint.

84. QualxServ asserts that paragraph 84 of the Complaint contains statements of law or opinion that QualxServ is not required to admit or deny. QualxServ denies the remaining allegations contained in paragraph 84 of the Complaint.

NINTH CLAIM FOR FAILURE TO FURNISH ITEMIZED WAGE STATEMENTS

85. QualxServ incorporates by reference paragraphs 1 through 84 as though fully set forth herein for each and every response in this Answer to the Complaint.

86. QualxServ asserts that paragraph 86 of the Complaint contains statements of law or opinion that QualxServ is not required to admit or deny. QualxServ denies the remaining allegations contained in paragraph 86 of the Complaint.

87. QualxServ asserts that paragraph 87 of the Complaint contains statements of law or opinion that QualxServ is not required to admit or deny. QualxServ denies the remaining allegations contained in paragraph 87 of the Complaint.

88. QualxServ asserts that paragraph 88 of the Complaint contains statements of law or opinion that QualxServ is not required to admit or deny. QualxServ denies the remaining allegations contained in paragraph 88 of the Complaint.

TENTH CLAIM FOR UNFAIR AND UNLAWFUL BUSINESS PRACTICES

89. QualxServ incorporates by reference paragraphs 1 through 88 as though fully set forth herein each and every response in this Answer to the Complaint.

1 90. QualxServ asserts that paragraph 90 of the Complaint contains statements of law
2 or opinion that QualxServ is not required to admit or deny. QualxServ denies the remaining
3 allegations contained in paragraph 90 of the Complaint.

4 91. QualxServ asserts that paragraph 91 of the Complaint contains statements of law
5 or opinion that QualxServ is not required to admit or deny. QualxServ is without information or
6 knowledge sufficient to admit or deny the remaining allegations of paragraph 91 of the Complaint
7 and therefore denies the remaining allegations contained in paragraph 91 of the Complaint.

8 92. QualxServ asserts that paragraph 92 of the Complaint contains statements of law
9 or opinion that QualxServ is not required to admit or deny. QualxServ denies the remaining
10 allegations contained in paragraph 92 of the Complaint.

11 **ELEVENTH CLAIM FOR REPRESENTATIVE ACTION ON BEHALF OF ALL**
12 **EMPLOYEES FOR VIOLATION OF LABOR CODE SECTION 2699**

13 93. QualxServ incorporates by reference paragraphs 1 through 92 as though fully set
14 forth herein each and every response in this Answer to the Complaint.

15 94. QualxServ asserts that paragraph 94 of the Complaint contains statements of law
16 or opinion that QualxServ is not required to admit or deny. QualxServ denies the remaining
17 allegations contained in paragraph 94 of the Complaint.

18 95. QualxServ asserts that paragraph 95 of the Complaint contains statements of law
19 or opinion that QualxServ is not required to admit or deny. QualxServ denies the remaining
20 allegations contained in paragraph 95 of the Complaint.

21 96. QualxServ asserts that paragraph 96 of the Complaint contains statements of law
22 or opinion that QualxServ is not required to admit or deny. QualxServ denies the remaining
23 allegations contained in paragraph 96 of the Complaint.

24 **AFFIRMATIVE DEFENSES**

25 **FIRST, SEPARATE AND AFFIRMATIVE DEFENSE**

26 The Complaint, and each purported cause of action therein, fails to allege facts sufficient
27 to constitute a cause of action.
28

SECOND, SEPARATE AND AFFIRMATIVE DEFENSE

Plaintiffs' and all alleged class members' claims are barred or diminished in whole or in part by the applicable statutes of limitations, including, but not limited to, 29 U.S.C. § 255 and California Code of Civil Procedure §§ 337, 338, 339 and 340 *et seq.*, Labor Code § 203, *et seq.* and Business and Professions Code § 17200 *et seq.* and all other applicable statutes of limitation, and statutes of repose, as well as the equitable doctrine of laches.

THIRD, SEPARATE AND AFFIRMATIVE DEFENSE

QualxServ alleges that Plaintiffs and all alleged class members have been paid and/or received all wages and expenses due to them by virtue of their employment with QualxServ.

FOURTH, SEPARATE AND AFFIRMATIVE DEFENSE

QualxServ alleges that Plaintiffs' and all alleged class members' alleged injuries were not proximately caused by any unlawful policy, custom, practice and/or procedure promulgated and/or tolerated by QualxServ.

FIFTH, SEPARATE AND AFFIRMATIVE DEFENSE

QualxServ alleges that Plaintiffs fail to state a claim for attorneys' fees under the FLSA or any other basis.

SIXTH, SEPARATE AND AFFIRMATIVE DEFENSE

QualxServ alleges that Plaintiffs and all alleged class members are not entitled to any additional wages as they were paid for all hours actually worked. Assuming Plaintiffs and all alleged class members are entitled to recover additional compensation, QualxServ has not willfully or intentionally failed to pay additional compensation and, as such, liquidated damages should not be awarded and only a two-year statute of limitations should apply under the FLSA.

SEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE

QualxServ alleges that if there is a finding that additional wages are due then it is entitled to an offset with respect to any overpayment of wages.

EIGHTH, SEPARATE AND AFFIRMATIVE DEFENSE

QualxServ alleges that Plaintiffs and all alleged class members are not entitled to an award of prejudgment interest if they prevail on any or all of their claims.

NINTH, SEPARATE AND AFFIRMATIVE DEFENSE

QualxServ alleges that Plaintiffs and all alleged class members are not similarly situated.

TENTH, SEPARATE AND AFFIRMATIVE DEFENSE

Plaintiffs have failed to satisfy all conditions precedent to bringing a claim pursuant to § 216(b) of the FLSA.

ELEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE

Plaintiffs' Rule 23 class claims should be dismissed to the extent that the putative class does not meet the numerosity requirements of Rule 23(a)(1).

TWELFTH, SEPARATE AND AFFIRMATIVE DEFENSE

Plaintiffs' Rule 23 class claims should be dismissed because there are no questions of law or fact common to the putative class.

THIRTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE

Plaintiffs' Rule 23 class claims should be dismissed because the claims or defenses of the representative party are not typical of the claims or defenses of the putative class.

FOURTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE

Plaintiffs' Rule 23 claims should be dismissed because he will not fairly and adequately protect the interests of the putative class.

FIFTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE

Plaintiffs' Rule 23 class claims should be dismissed because questions of law or fact common to members of the putative class do not predominate over any questions affecting only individual members, and a class action is not superior to other available methods for fairly and efficiently adjudicating the controversy.

SIXTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE

The Complaint, and each purported cause of action contained therein, is barred by the doctrine of unclean hands.

SEVENTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE

Plaintiffs and all alleged class members are estopped from pursuing the Complaint, and each purported cause of action contained therein, by reason of their own actions, estoppel, and

1 or/course of conduct.

2 **EIGHTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE**

3 Plaintiffs and all alleged class members are barred from pursuing this Complaint, and each
4 purported cause of action contained therein, as a class action, as substantial difficulties are likely
5 to be encountered in the management of this action as a class action, as the interest of each
6 member and the whole differ.

7 **NINETEENTH, SEPARATE AND AFFIRMATIVE DEFENSE**

8 Plaintiffs and all alleged class members are barred from pursuing this Complaint, and each
9 purported cause of action contained therein, as a class action, as there is no existence of an
10 ascertainable class and well-defined community of interest among the class members.

11 **TWENTIETH, SEPARATE AND AFFIRMATIVE DEFENSE**

12 Plaintiffs and all alleged class members are barred from pursuing this Complaint, and each
13 purported cause of action contained therein, as a class action, as defenses to be offered raise
14 individual issues specific to each member of the class that predominate over issues in common.

15 **TWENTY-FIRST, SEPARATE AND AFFIRMATIVE DEFENSE**

16 The Complaint, and each purported cause of action contained therein, is barred because
17 Plaintiffs and all alleged class members never advised QualxServ that they were working more
18 than what was reported and/or paid pursuant to the terms and conditions of employment.

19 **TWENTY-SECOND, SEPARATE AND AFFIRMATIVE DEFENSE**

20 The Complaint, and each purported cause of action contained therein, is barred because
21 Plaintiffs and all alleged class members failed to utilize the grievance procedure as required by
22 law and/or contract and/or practice.

23 **TWENTY-THIRD, SEPARATE AND AFFIRMATIVE DEFENSE**

24 The Complaint, and each purported cause of action contained therein, is barred because
25 through course of dealing and otherwise, Plaintiffs and all alleged class members mutually
26 understood, agreed and promised that they would adequately report all time spent in services to
27 QualxServ with the agreement and promise that they would report and demand payment for such
28 services, and QualxServ would not otherwise be obligated or called upon to pay them for such

1 services not worked or reported.

2 **TWENTY-FOURTH, SEPARATE AND AFFIRMATIVE DEFENSE**

3 The Complaint, and each purported cause of action contained therein, is barred because
4 Plaintiffs' and all alleged class members' representations, agreements and promises to QualxServ
5 in respect to providing services and accurate reporting of such services on a regular basis, and
6 QualxServ's actions and reasonable reliance thereon, constitutes promissory estoppel and
7 preclude Plaintiffs and all alleged class members from maintaining this action against QualxServ.

8 **TWENTY-FIFTH, SEPARATE AND AFFIRMATIVE DEFENSE**

9 QualxServ alleges that the hours Plaintiffs and all alleged class members claim are not
10 hours worked so that minimum wage and overtime compensation need not be paid for those
11 hours.

12 **TWENTY-SIXTH, SEPARATE AND AFFIRMATIVE DEFENSE**

13 QualxServ alleges that Plaintiffs and all alleged class members absented themselves to
14 avoid payment of wages and/or refused to receive the payment fully tendered to them by
15 QualxServ, thereby relieving QualxServ of liability for waiting time penalties under Labor Code
16 § 203.

17 **TWENTY-SEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE**

18 QualxServ alleges that Plaintiffs and all alleged class members are not entitled to
19 liquidated damages because any alleged act or omission by QualxServ was in good faith and
20 QualxServ had reasonable grounds for believing that its conduct did not violate any provision of
21 the Labor Code or Industrial Welfare Commission order relating to the minimum wage.

22 **TWENTY-EIGHTH, SEPARATE AND AFFIRMATIVE DEFENSE**

23 That as to the Complaint, QualxServ presently has insufficient information or knowledge
24 on which to form a belief as to whether it may have additional, as yet unstated, affirmative
25 defenses available. QualxServ reserves the right to assert additional defenses in the event
26 discovery indicates they would be appropriate.

PRAYER

WHEREFORE, Defendant QualxServ, LLC, prays for judgment as follows:

1. That Plaintiff and all alleged class members take nothing by way of this Complaint, and that the same is dismissed without prejudice;
2. For attorneys' fees and costs of suit incurred herein; and
3. For such other and further relief as this court may deem just and proper.

Dated: August 19, 2010

Hiscock & Barclay, LLP

By: s/Brian E. Whiteley

Attorneys for Defendant
QualxServ, LLC, f/k/a Worldwide
Techservices, LLC